

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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**MYLAN PHARMACEUTICALS, INC., et al.,**

**Plaintiffs,**

**WARNER CHILCOTT PUBLIC LIMITED  
COMPANY, et al.,**

**Defendants.**

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**Civ. No. 12-3824  
CONSOLIDATED**

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**JOINT PROGRESS REPORT**

Pursuant to Section V of the Court's Case Management Order dated August 24, 2012, the parties hereby submit their Joint Progress Report for May 2014. The following are matters currently pending before the Court and fully briefed: (1) Indirect Purchaser Plaintiffs IBEW and IUOE's Amended Motion for Class Certification (Dkt. No. 449); (2) Defendants' Motion to Exclude the Declarations, Reports and Testimony of Gordon Rausser (Dkt. No. 468); (3) Direct Purchaser Plaintiffs' motion for final approval of settlement (Dkt. No. 571); (4) Direct Purchaser Plaintiffs' motion for attorneys' fees (Dkt. No. 572); (5) Motions for Summary Judgment and Partial Summary Judgment (Dkt. Nos. 493, 496, 511, and 556); (6) Proposed Pre-trial Schedule (Dkt. Nos. 605, 607, and 608); and (7) Mylan's request for authorization to disclose Defendants' documents (Dkt. No. 615).

**I. Pleadings**

**A. Direct Class Certification Motion for Purposes of Settlement**

Pursuant to a settlement reached between the Direct Purchaser Plaintiffs and the Defendants, on January 10, 2014, Direct Purchaser Plaintiffs filed an unopposed motion for class certification for

purposes of settlement, preliminary approval of the settlement, appointment of class counsel, and approval of the form and manner of notice to the settlement class. Dkt. No. 452. The Court held a hearing on Plaintiffs' unopposed motion on February 6, 2014 and subsequently granted the motion. Dkt. Nos. 455, 484. On April 24, Direct Purchaser Plaintiffs filed an unopposed motion for class certification for the purposes of settlement and final approval of the settlement. Dkt. No. 571. On April 24, 2014 the Direct Purchaser Plaintiffs filed their motion for an award of attorneys' fees. Dkt. No. 572. A hearing on final approval is scheduled for June 9, 2014. Dkt. No. 484.

**B. Consolidation of Indirect Purchaser Complaints**

Indirect purchaser plaintiff International Union of Operating Engineers, Local 132 ("IUOE") filed its Complaint on December 5, 2013. Dkt. No. 447. On December 9, 2013, the Court ordered that IUOE's case be consolidated into the lead docket. Dkt. No. 349. Laborers Health and Welfare Trust Fund for Northern California ("Laborers' Trust") filed its Complaint on April 8, 2014. On May 6, 2014 the Court ordered that Laborers' Trust's case be consolidated into the lead docket. Dkt. No. 594. On May 14, Laborers' Trust filed its Amended Complaint. Dkt. No. 604.

**C. Non-Class Retailer Settlement.**

On April 21, 2014, the Court stayed all deadlines pertaining to the Non-Class Retailer Plaintiffs, including the deadline to respond to Defendants' motions for summary judgment. Dkt. No. 424. On May 27, 2014, the Court endorsed a Stipulation of Dismissal with Prejudice between the Non-Class Retailers and Defendants. Dkt. No. 638. The stipulation dismisses all of the Non-Class Retailers' actions with prejudice (Civ. Nos. 13-658, 13-1644, 13-4542).

**D. Motion to Dismiss or in the Alternative for Summary Judgment on Laborers' Trust's Amended Complaint.**

On May 8, 2014, Defendants filed a Motion to Dismiss or in the Alternative for Summary Judgment as to All Claims of Laborers Health and Welfare Trust Fund for Northern California. Dkt.

No. 593. May 14, Laborers Health and Welfare Trust Fund filed an amended complaint. Dkt. No. 604. May 16, 2014, On May 28, 2014, Warner Chilcott filed its Motion to Dismiss or in the Alternative for Summary Judgment as to the Amended Complaint of Laborers' Trust. Dkt. No. 637.

**E. Laborers' Trust's Motion for Class Certification.**

On May 16, 2014, Laborers Health and Welfare Trust Fund for Northern California moved to certify its class. Dkt. No. 609. IUOE and Laborers' Trust each served an expert report in support of their Motions for Class Certification. Defendants intend to file their Opposition shortly.

**F. Mylan's Request to Disclose Defendants' Documents.**

On May 19, 2014, Plaintiff Mylan requested, pursuant to the Protective Order entered on October 1, 2012, that the Court permit the disclosure of 43 Defendant documents to Mylan fact witnesses for the purpose of trial preparation. Mylan's request is fully briefed. *See* Dkt. Nos. 615, 616, 626, 627, 629.

**II. Fact Discovery**

**A. Party Discovery**

The parties have completed all party document productions and depositions, with the exception of certain categories of documents and testimony, including discovery of indirect purchaser plaintiff IUOE Local 132 and Laborers' Trust Fund of Northern California. Defendants have served IUOE Local 132 and Laborers Trust Fund of Northern California with requests for production on March 31 and April 21, respectively. In response to Defendants' Requests for Production of Documents and pursuant to the Court's May 14, 2014 Order (Dkt. No. 603), Laborers' Trust and IUOE produced responsive documents on May 21 and May 23, respectively. Defendants are reviewing Plaintiffs' ongoing productions and reserve the right to pursue deficiencies as necessary.

On May 20, 2014, Defendants deposed IUOE's 30(b)(6) representative. Pursuant to the Court's May 22, 2014 Order (Dkt. No. 628), on May 27, 2014, Defendants deposed Laborers Trust's 30(b)(6)

representative. Defendants have noticed additional 30(b)(1) depositions for IUOE and Laborers' Trust.

#### **B. Non-Party Discovery**

Defendants have issued third-party subpoenas related to IUOE and Laborers' Trust's claims.

#### **III. Merits Expert Reports and Expert Discovery**

Expert depositions have been completed. The parties reserve the right to pursue deficiencies as necessary.

#### **IV. Summary Judgment**

On March 10, 2014, Defendants moved for summary judgment (Dkt. Nos. 493, 511); Mylan moved for summary judgment on Defendants' antitrust liability (Dkt. No. 556); and Indirect Purchaser Plaintiffs moved for partial summary judgment on Defendants' pass-on affirmative defenses (Dkt. No. 496). On April 28, 2014, the parties filed oppositions to the pending motions for summary judgment. Dkt. Nos. 573–78, 580. On May 7, 2014, the Intellectual Property and Antitrust Law Professors filed their Motion for Leave to file an Amici Curiae brief which the Court granted on May 8, 2014. Dkt. Nos. 596, 598. On May 23, 2014, the parties' filed their reply briefs. Dkt. Nos. 630-634.

#### **V. Proposed Pre-Trial Schedule**

On May 15, 2014, the parties submitted a Proposed Pre-Trial Scheduling Order to the Court containing a proposed schedule, along with disputed issues. Dkt. Nos. 605, 607, 608, 617, 620. Since that date, as contemplated, the parties have exchanged their trial witness lists (including Plaintiffs' rebuttal list and Defendants' sur-rebuttal list), and Plaintiffs have served their trial exhibit lists on Defendants. On May 29, 2014, the parties exchanged lists of contemplated motions in limine. On May 30, 2014, the parties will exchange lists of deposition designations.

A pre-trial conference is scheduled for June 18, with trial to begin on June 24.

Dated: May 30, 2014

Respectfully submitted,

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